1950 K

File No. O. Provl. Munis Corp | 50

Legal Dept.

A. **BRANCH**

Subject:— Opinions under the Bombay Provincial Municipal Corporations Act 1949

E
1-12

File No. O. Provl Munis Corp | 50

Gen. 194 e.

286-

C O N T E N T S

Legal Department File No. O.Provin. Munis Cor / 50.

Sr. No.	Compilation No.	Subject	Pages.
		Opinions under the Bombay Provincial Municipal Corp Act/1949.	
1.	O.No.1986/10-3-50.	Sec 457(11)(c) and (17) Question whether when the Bombay Provl. Municipal Corporation Act is brought into operation in the city of the Ahd. it would be possible to take action under sec 269 thereof to prohibit the construction of T.B. Hospital or prevent the conversion of an existing eye hospital into T.B. Hospital.	1-2.
2.	D.No.5937/1-5-50.	SS, 99, 127(1)&(2) and 149(1) Re: taxes levied by the Poona city Municipality and the Poona Suburban Municipality Question regarding bringing about uniformity in the —	3-6
3.	O.No.6901/22-5-50.	Sec 45. Whether the proposal that officers appointed under sec 45 of the Act, should receive dearness allowances at the rates sanctioned by the corporation from time to time is legally feasible.	7-8
4.	O.No.6900/22-5-50	Sec 45. Whether temporary appointments made under sec. 45(7) should be in conformity with the qualifications laid down in the rules made under Sub-section (3) and should be also subject to confirmation by the State Govt.	9-1
5.	O.No.12018/23-8-50.	Appendix IV para 23. Re: Application of the provisions of the Act particularly in respect of building activity to the areas recently included in the limits of the Poona Corporation which were formaly included in village panchayats.	15.

6.	O.No.1326/14-8-50.	35 127(2)(f)149 Whether Poona Municipaltiy Corporation can levy tax on goods in transit. 19-22
7.	O.No.781Confl.21-10-50.	Sec 8, App IV para 17 Sch. Ch I etc. Re: Preparation of Municipal Election Roll. 23-30
8.	O.No.228-L/31-10-50	Re: Preparation of supplementary election roll. 31-32.
9.	O.No.16675/27-11-50.	~~85~~ 3(3)and 3(1) Question whether the exemption granted to the Poona City Municipality from the provisions of sec 94(2) of the Motor Vehicles Act,1939 is in order or that ~~need be be replaced by~~ the words "Poona Municipality" Corporation as suggested by the Poona Minicipal Corporation, as it has come into being. 33 34

· Corporation has

(X) need to be replaced by the words "Poona City Municipal Corporation"

The Bombay Provincial Municipal Corporation Act 1949 Section 457 (11)(c)&(17).

Section 260(1)(c) of the Bombay Provincial Municipal Corporation Act, 1949 relied on by Health and Local Government Department would not be applicable as it related to regulating the constructing of buildings and not the use thereof. Possibly the object can be achieved by framing rules under section 457(11)(c) and (17).

Sd/ P.M.Lad.
9/2

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No. 1986 dated the 10th February 1950.

VGP. 7-7-56.

In his note dated 25-4-50 the Secretary Local Self Government and Public Health Department inter alia states thus:-

" The situation that the Municipal Commissioner wants us to rectify by issue of an order under this paragraph cannot, in my opinion be regarded ~~under as~~ "difficulty" arising under the Provincial Municipal Corporations Act. It is a situation which is advisely created in the Act and a remedy provided for it. The Municipal Commissioner, therefore, will have to be informed to follow the normal procedure for the levy of revision of taxes provided under the Act."

R.L.A. is requested to adivise whether the view expressed by the Secretary, Local Self Government and Public Health Department is correct.

Sd. P.M.Lad.

Remembrancer of Legal Affairs.

Bombay Provincial Municiapl Corporations Act 1949. Sections 99 127(1) & (2) (49)(1).

The view expressed by the Secretary, Local Self Government and Public Health Department is correct.

Sd/ P.M.Lad.
1/5

Remembrancer of Legal Affairs.

U.R. to L.S.G.& P.H.D. No. 5939 dated the 1st May 1950.

VGP. 7-7-56.

The Bombay Provincial Municipal Corporations Act, 1949 sec 45.

The question for the consideration of the R.L.A. is whether the proposal made by the Municipal Commissioner, Poona that officers appointed under section 45 of the Bombay Provincial Municipal Corporations Act, 1949 should receive dearness allowances at the rates sanctioned by the Corporation from time to time is legally feasible.

2. Sub-section (3) of section 45 of the Act provides inter alia that an officer appointed under that section shall receive such monthly salary and allowances as the Corporation may with the approval of the State Government from time to time fix. It would appear from this section that the allowances payable to each officer should be approved by the Government If the Corporation wants to alter the salary or the allowances, it will have to seek the approval of Government to such change. The words "from time to time" make that clear. The proposal made by the Municipal Commissioner, Poona is therefore vague and quite opposed to the requirements of the section. As the provisions of sub-section (3) stand at present, the salary and allowances payable to the officers appointed under section 45 have to be fixed by the Corporation and approved by Government.

Sd/ P.M.Lad.
20/5

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. 6901 dated the 22nd May 1950

VGP. 7-7-56.

The Bombay Provincial Municipal Corporations Act, 1949, Sec 45.

The question for the consideration of the R.L.A. in this case is whether temporary appointments made under sub-section (7) of section 45 of the Bombay Provincial Municipal Corporations Act, 1949, should be in conformity with the qualification laid down in the rules made under sub-section (3) and should be also subject to confirmation by the State Government

2. Sub-section (7) of section 45 of the Bombay Provincial Municipal Corporation Act, 1949 provides that "pending the settlement of an appointment under sub-section (1) or sub-section (5) the Corporation may appoint a person to fill the vacancy temporarily and may direct that the person so appointed shall receive such monthly salary and allowances not exceeding the maximum fixed under sub-section (3) for the time being as it thinks fit: provided that no such appointment shall extend beyond or be made after the lapse of 6 months from the date on which the vacancy occurs." Sub-section (3) speaks of an Officer appointed under this section. An Officer appointed under sub-section 7 would be an Officer appointed under this section and giving that expression its natural meaning there is no reason to exclude the appointment made under sub-section (7) from the scope of the qualification etc. prescribed by sub-section (3) The appointments under sub-section (70 are to be made pending the settlement of an appointment under sub-section (1) or sub-section (5) that is, pending the settlement of a per manent

appointment or the appointment as a result of a vacancy. Sub-section (7) no doubt contemplates purely temporary appointments but public policy requires that unqualified persons should not be appointed even for such temporary appointments. The qualifications are of a technical character such as Chief Engineer, Medical Officer, Municipal Chief Auditor, and the posts of a responsible nature and it would be opposed to public policy that persons who do not possess requisite qualifications should be allowed to hold the posts even temporarily. The reason why the salary and allowances under sub-section (3) are specifically mentioned is that it was intended that although it might serve as the ceiling, the Corporation should have power to fix a lower salary, the appointment being of a temporary nature. That itself shows that the entire provisions of sub-section (3) were to apply to an appointment under sub-section (7). On a plain reading of sub-sections (3) and (7) and also grounds of public policy I am, therefore, of opinion that a person appointed under sub-section (7) must possess the qualifications prescribed by the rules.

3. The position regarding the application of of sub-section (4) is clearer still because that sub-section uses the expression "every appointment made under this section". The expression "every appointment" would naturally include even a temporary appointment and it was apparently

was apparently the intention that the posts being of a very responcible character even temporary appointments should be subject to the confirmtion by the Provincial Government.

Sd/ P.M.Lad.
20/5

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 6900 dated the 22nd May 1950

VGP. 7-7-56.

Bombay Provincial Municipal Corporation Act 1949: Appendix IV para 23.

Para 23 in Appendix IV to the Bombay Provincial Municipal Corporations Act, 1949 provides that if any difficulty arises in giving effect to the provisions of the Act or by reason of anything contained in the Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order to anything which appears to it necessary for the purpose of removing the difficulty. The areas in question hwe been included within the limits of the Municiapl Corporation by Government Notification, Local Self Government & Public Health Department dted 1-8-1950 issued under sub-section (3) of section 3 of the Act; and the Municipal Administration of those areas will be governed by the provisions of the Bombay Provincial Municipal Corporations Act, 1949. The rules in Chapeter XII in the Schedule to the Act (Building Regulations etc) would therefore be applicable. If those rules are found to be unsuitable, it is open to the Corporation to amend them suitably under section 454. That the making of suitable building rules will take some time does not appear to be sufficient justification to say that adifficulty has arisen in giving effect to the provision of the Act. The proposal made by the Commissioner that Government should make an order under para 23 in Appendix IV to the Act does not appear to be legally feasible.

The trend of the Commissioner letter appears to be that there should be a different set of building by-laws for these ex-village panchayat and District Local Board areas. It

appears doubtful whether under the Act as it stands at present different sets of rules can be made for different areas within the limits of the Corporation. The best remedy would appear to be to insert a suitable provision in the Act on the lines of sub-section (1) of section 349 E of the Greater Bombay Municipal Act, 1949, empowering the Corporation to prescribed special conditions with respect to the erection or rerection of buildingsetc. in such areas.

Sd/ P.M.Lad.
22/8

Remembrancer of Legal Affairs.

U.R. to L.S.G.&P.H.D. No. 12018 dated the 23dd August 1950.

VGP. 7-7-56.

Bombay Provincial Municipal Corporations Act, 1949.

Sections 127(1)(f), 149 etc. Whether the Poona Municipal Corporation can levy tc on goods in transit.

Before the Poona Municipality was, by law, elevated to the stat us a Corporation, it was governed by the Bombay Municipal Boroughs Act, 1925 and it levied octroi duty under rules and by-laws originally made under section 46(1) and 49(j) of the Bombay District Municipal Act, 1901, which correspo ded to section 58(j) and 61(n) of the Bombay Muni cipal Boroughs Act, 1925. Those rules provided for refund of the amount of octroi duty on the exporta tion of goods after making a deduction of 10 per cent (see rule 18(3)). This deduction of 10 per cent amounted in effect to the imposition of a new or additional tax. After 1st April 1937 the munici pality had no power to levy such tax either under entry 49 in the Provincial Legislative List or any other entry in the State List, but in virtue of the provisions of section 143(2) of the Government of India Act, 1935 which were reproduced in the provis to sub-section (2) of section 73 of the Bombay Municipal Boroughs Act, 1925 its power to continue t that tax was preserved till provision to the contra ry to was made by the Central Legislature. As sta ted before, the Poona Municipality is now a Corpora tion and is governed by the Bombay Provincial Muni cipal Corporations Act, 1949. The Schedule to the Act contains rules which under section 453 of the Act are to be deemed part of the Act. Chapter VIII of in the Schedule contains Taxation Rules. Rule 63 in that Chapter impliedly authorises the Corpo ration to make a deduction of 10 per cent before refunding the amount of octroi paid under rule. The continued validity of this levy 10 per cent is saved by article 277 of the Constitution of India. However, instead of leaving the fate of this tax to the rule of interpretation, advantage may be ta ken now of entry 56 in List II in the Seventh

Seventh Schedule to the Constitution and unless there be any objection on any administrative ground the Corporation may be advised to resort to section 149 and ~~197~~ of the Bombay Provincial Municipal Corporations Act. 1949 and levy in lieu of 10 per cent deduction, a regular tax to that amount on goods carried by road. The levy of such tax will be competent under clause (f) of sub-section (2) of section 127 of the Corporations Act.

Sd. P.M.Lad.
13/9

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 13126 dated the 14th Sept. 1950.

VGP. 7-7-56.

Bombay Provincial Municipal Corporations Act, 1949 Section 8; App. IV para 17 Sch. Ch.I etc. Preparation of Municipal election roll.

In consideration with the preparation of the Municipal Election Roll the Municipal Commissioner, Poona, has raised the following questions for the consideration of the R.L.A.

(1) Whether there is any objection to the roll which is to come into operation in 1951 and the Voters' list which is expected to be published in May 1951 being called and viewed as the election roll for 1950;

(2) Whether the presumption that all persons who have not attained the age of 21 years on 1-1.1950 will stand rightly excluded, is correct;

(3) Whether the presumption that persons who have not attained the residence or business premises qualification on1.1.1950 will be excluded is correct;

(4) Whether the presumption that person obtaining taxation qualification under para 17(3) of App.IV to the Bombay Provincial Municipal Corporations Act, 1949 will have to be included in the election roll over and above the persons qualified under section 8(3) of the Act is correct.

2. The Commissioner has commenced the work of preparing the election roll proposing to include therein the names of all persons who have attained the age of 21 years on 1st January 1950. The list of voters would be published and the roll would be ready sometime in 1951 and the elections are proposed to be held in about September 1951. Para 17(1) in App.IV to the Bombay Provincial Municipal Corporations Act, 1949, requires the Commissioner forthwith to proceed to prepare the Municipal election roll and hold general Ward elections inaccordance, as far as may be with the provisions of the Act. The concluding words of this sub-para qualify not only the holding of elections but also the preparation of th election roll. Under section 8(1) of the Act one of the qualifications of a voter is that he should have attained the age of 21 years on the first day of January of the year for which the Municipal election roll is being prepared. Section 8(2) provides the person, shall be deemed to have the prequisite

qualification if he has ordinarily resided in dwelling in the City for a period not less than one year immediately proceeding the first day of January or the year for which such roll is prepared. Section 8(1)(b) and section 8(2) expressly refer to the preparation of the roll, while section 8(3) referes to the publication of the roll. The Municipal election roll is to be prepared in accordance with the rules prescribed in Chapter I in the Schedule to the Act. Under sub-rule (1) of rule 1 in that Chapter the Commissioner has to publish the list of voters; he has to consider the claims of persons who apply for being entered in the list. Under rule 3 a printed copy of the list as revised by the Commissioner and corrected in accordance with the orders passed by the District Judge and signed by the Commissioner becomes the Municipal Election Roll. The roll shall continue in operation for a period of four years. Rules 4 and 5 provide for the preparation of the supplementary election roll. Under sub.rule (1) of rule 4 persons who claim to be entitled to be entol as voters under section 8(1) can give notice of their claims before such date as may be fixed by the Commissioner in each of the three succedding years. The Commissioner has to hear these claims and after following a somewhat similar procedure as in the case of the principal roll, the lists come into operation as a supplementary election roll. It would be seen from the above provisions that though the Municipal election roll remains in operation for a period of four years, it has to be brought up- to-date and corrected by inviting applications from claimants every year. The Municipal Commissioner Poona, has at present commendced with the preparation of the roll for 1950. It is proposed to hold the elections sometime after September 1951. It will be necessary

for him to prepare also a supplementary elec tion roll as provided in Chapter I in the Sch dule. If such action is not taken persons who attain the age of 21 years on 1st January 1951. will be deprived of their right to be voters; and it will not only result in injustice but the validity of the proposed elections may be challenged on that ground. The answer to the first question raised by the Commissioner therefore is that the Election roll to be pre pared must be deemed to be the roll of 1950 but it will have to be brought up-to-date by the preparation of a supplementary election roll.

3. In view of the above, the questions whether persons who attain the age of 21 years after 1.1.1950 or attain the residence or bus iness premises qualification after that date can be excluded do not survive.

4. The last question is whether person dee med to have obtained the taxation qualificat ion under para 17(3) in App.IV will have to be included in the election roll in addition to persons qualified under section 8(3). Under that section a person is deemed to have the requisite taxation qualification if he owns in the City immoveable property which is assessed on the first day of April next preceding the date of the publication of the roll to any of the pro perty taxes. Para 17(3) in App IV on the other hand provides that every person who owns immove able property in the City which on the date immediately preceding the appointed day was assessed to a house tax or any tax in the form of a rate on lands and buildings levied by an local authority having jurisdiction in any portion of the City shall be deemed to have

the requisite taxation qualification under sub-section (3) of section 8 of the Act for the purpose of enrolment in the first municipal election roll. This is a special provision so far as the first election roll is concerned and therefore, in taking into consideration the taxation qualification for the preparation of that roll, it would not be correct to rely upon the qualification prescribed by section 8(3). It may be observed that section 8(3) refers to persons assessed to any of the property taxes impossible under the Bombay Provincial Municipal Corporation Act, 1949. The qualification prescribed by that section could not be had for the purpose of preparing the first election roll. The Legislature, therefore made this good by making special provisionin para 17(3) in App.IV. The presumption made by the Municipl Commissioner Poona that person qualified under para 17(3) will have to be included in the roll over and above those qualified under section 8(3) and the view expressed by him that more than one person may obtain the taxation qualification by virtue of the same immoveable property (because of chage of hands) are not correct.

5. As usual a fee of Rs.80/-may be charged to the Corporation for the opinion.

-Sd/ J.R.Dhurandhar.
21/10

Additional Secretaryt o Government.

U.R. to L.S.G. & P.H.D. No.781-Confl dated the 21st October 1950.

VGP. 7-7-56.

No. 226-L
Legal Department,
Council Hall, Poona, 31st October 1950.

From

Shri J.R. Dharandhar,
Additional Secretary to the Government of Bombay,
Legal Department.

To

The Municipal Commissioner,
Poona City Municipal Corporation,
Vishrambag Wada, Poona City.

Subject:- Preparation of Election Roll.

Sir,

In reply to your letter No.MCO/2725 dated the 30th October 1950, it appears that the statement in paragraph 2 of my opinion dated the 21st October 1950 that it will be necessary for the Commissioner to prepare also supplementary election roll as provided in Chapter I of the Schedule appears to have caused some difficulty. Under rule 4(1) in Chapter I of the Schedule to the Bombay Provincial Municipal Corporations Act, 1949, it is for the Commissioner first to issue a public notice fixing the date on or before which the persons whose names are not in the municipal election roll and who claim to be entitled to be enrolled as voters are to give notice of their claims in writing to the Commissioner. Until the Commissioner has given such public notice it is not open to any person to give notice of his claim under rule 4(1). Until, therefore, the Commissioner is satisfied that it is necessary to prepare a supplementary election roll and gives notice as required by rule 4(1), no person is entitled to give notice of his claim to the Commissioner. The preparation of the supplementary election roll, therefore depend supon the Commissioner giving public notice notifying the date on or before which persons who are entitled to have their names enrolled as voters should give notice of their claims to the Commisione

Yours faithfully,

Sd/ J.R. Dhurandhar.
31/10

Additional Secretaryt ot Government.

Copy to the Secretary to the Government of Bombay,
Local Self Government and Public Health Department.

VGP. 7-7-56.

Bombay Provincial Municipal Corporation Act 1949. Section 1(3) and 3(1).

By Government Notifications in the Local Self Government and Public Health Department Nos. 5608/33, dated 15-2-50 the provisions of the Bombay Provincial Municipal Corporation Act, 1940, were brought into operation in the City of Poona with effect from 15-2-1950 under sub-section (3) of section 1 of that Act; and the local area constituting the City of Poona was also notified under sub-section (1) of section 3. The Municipal government of that City, is, from the 15th February administered in accordance with the provisions of the said Act and for all purposes a corporation has been established for the City of Poona with effect from that date, The reference to the Poona City Municipality in the Home Department Notification No. 8628/5, dated 3-4-1950 is therefore not correct. It would be necessary to issue a fresh notification as proposed by the Commissioner.

Sd/ P.M.Lad.
23/11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 16675 dated the 27th November 1950.

VGP. 7-7-56.